

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**1200 19TH STREET, N.W.**

**SUITE 500**

**WASHINGTON, D.C. 20036**

(202) 955-9600

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FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE: (202) 887-1248

EMAIL: rbuntrock@kelleydrye.com

October 8, 2003

**VIA ELECTRONIC FILING**

Marlene Dortch, Secretary,  
Federal Communications Commission  
445 12th Street SW  
Room TWB-204  
Washington, DC 20554

Re: *Ex Parte Notification: WC Docket 03-167, Application By SBC Communications Inc. For Authorization Under Section 271 of The Communications Act to Provide In-Region, Inter LATA Service in the States of Illinois, Ohio, Indiana and Wisconsin*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, Mpower Communications Corp. ("Mpower), by its undersigned counsel, submits this notification of an ex parte meeting in the above-captioned proceeding that took place yesterday involving the undersigned, Scott Sarem and Pat Wilson of Mpower (both via teleconference) and Scott Bergmann, Legal Advisor to Commissioner Adelstein. Materials referred to in the course of the presentation are attached hereto.

The parties discussed SBC's failure to comply with Checklist Item 2 of the 271 Checklist in the state of Illinois. Specifically, the parties discussed SBC's improper billing of Mpower for trip charges associated with approximately 14,000 trouble tickets, SBC's refusal to address the disputed charges with Mpower or adhere to the agreement between the parties to settle the disputes, and the on-going problems associated with SBC's inability to properly code trouble tickets and the resulting improper billing. The parties also discussed SBC's September 22 and October 2, 2003 ex parte presentations in this docket responding to Mpower's September 16 and September 24 filings.

Specifically, the parties discussed SBC's contentions in its September 22 and October 2, 2003 ex parte responses: (1) that SBC has a new process in place "in hopes" of

Marlene Dortch  
October 8, 2003  
Page Two

reducing the number of billing disputes that arise as a result of SBC's faulty trouble ticket coding process; (2) SBC's contention that Mpower does not expend any effort to demonstrate why it believes SBC's charges are inappropriate; and (3) that Mpower has "not agreed to an appropriate sample of trouble tickets from a time period that already was the subject of a prior settlement."

Mpower explained that the new "process" touted by SBC as a solution to the systemic billing problems highlighted by the Mpower dispute consists merely of an electronic method of filing disputes, and that Mpower has not observed any decrease in the number of trip charge disputes it has been forced to file. Further, Mpower provided an explanation of the intensive research and investigation that it undertakes both prior to filing any dispute of improper trip charges with SBC, as well as the hours it expends researching and investigating the disputes in order to prove Mpower's position to SBC once the disputes have been filed. SBC's contention that Mpower has refused to provide a new sample of trouble tickets is simply false. Moreover, SBC has not explained to Mpower why it refuses to adhere to the ground rules that one of its senior executives agreed to as a means of settling the disputes.

Mpower also expressed that many carriers, including Mpower, have resorted to enforcement forums outside the Commission and state commissions in large part because of the ineffectiveness of these bodies in enforcing RBOC obligations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross A. Buntrock". The signature is fluid and cursive, with the first name "Ross" being the most prominent.

Ross A. Buntrock

cc:  
Scott Bergmann  
Pamela Arluk

Scott Sarem Mpower VP Strategic Relations, Pat Wilson, Mpower Director  
Strategic Relations;; Ross Buntrock, Kelley Drye & Warren  
October 7, 2003

SBC Midwest 271 Application, WC Docket 03-167



**mpower<sup>TM</sup>**  
**Communications**

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# Overview

- Background of Mpower.
- 271 Precedent Requires SBC to Show it Provides Accurate, Auditable Wholesale Bills.
- History of Mpower's Trip Charge Dispute With SBC.
- SBC-IL Violates Checklist Item 2.



# Background of Mpower

- Facilities-based CLEC providing voice and data products to small, medium and large businesses.
- Provides Service in California, Illinois and Nevada.
- Collocated in 300 central offices (70 in Illinois).

# Section 271 Requires SBC to Provide Accurate Wholesale Bills

- *Verizon Pennsylvania Order*, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶¶22-23 (2001) concluded:
  - “Inaccurate or untimely wholesale bills can impede a competitive LEC’s ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition.”
- Grossly inaccurate billing, on on-going basis denies CLECs a meaningful opportunity to compete.

# History of Mpower's Dispute with SBC

- SBC has admitted that it incorrectly billed Mpower for trip charges in Illinois between April 2002 through August 2003.
  - Mpower investigates every trouble before opening a ticket with SBC
  - SBC billed Mpower for 14,000 trouble tickets during the dispute period.
  - In an effort to resolve a \$1.2 Million dispute, SBC and Mpower agreed to research a random sample for a two month period and apply the results to the entire dispute period.
- The results of the research was that SBC Ameritech incorrectly billed Mpower 93% of the time.
- Mpower provided SBC with another randomly selected group of trouble tickets from the same sample and came up with identical results.



# History of Mpower's Dispute with SBC

- SBC will not honor the agreement it made to resolve the dispute, and has provided no factual basis to suggest that the results of the random sample were incorrect.
  - SBC agrees with the results of the sample (93% of the trouble tickets were billed incorrectly).
  - SBC does not want to take a financial hit against a \$1.2 million receivable
  - SBC merely wants Mpower to accept a different number for a settlement with no reasoning or factual analysis to support its position.
- SBC is flexing its muscles to collect on admittedly incorrect bills



## SBC-IL Violates Checklist Item 2

- SBC must be held accountable for its non-compliance with the 271 Checklist.
- SBC's poor billing performance is NOT a discrete issue limited to Mpower.
- SBC has no process in place to resolve these disputes quickly (as evidenced by the 14 months of this one).
- SBC has failed to demonstrate that its "new process" to ensure proper trouble ticket coding.

# Conclusion: The Commission Should NOT Approve the Illinois Application

- SBC must not be awarded 271 authority in IL until it can affirmatively demonstrate that it is in compliance
  - This includes resolving Mpower's issue
- The Wireline Competition Bureau has told Mpower that SBC's 271 authority is a "sure thing" despite deficiencies in SBC's billing practices and systems.
- The FCC must enforce the law.
- If SBC is not held accountable for compliance with the law it will be further emboldened to act anti-competitively toward facilities based CLECs.

**Buntrock, Ross A.**

---

**From:** Sarem, Scott [ssarem@mpowercom.com]  
**Sent:** Tuesday, October 07, 2003 4:50 PM  
**To:** Buntrock, Ross A.; Wilson, Pat  
**Subject:** FW: Mpower - Complaint\_v1.DOC

FYI

-----Original Message-----

**From:** Scott Bergmann [mailto:Scott.Bergmann@fcc.gov]  
**Sent:** Tuesday, October 07, 2003 1:46 PM  
**To:** Sarem, Scott  
**Subject:** RE: Mpower - Complaint\_v1.DOC

Thanks, Scott!

-----Original Message-----

**From:** Sarem, Scott [mailto:ssarem@mpowercom.com]  
**Sent:** Tuesday, October 07, 2003 4:23 PM  
**To:** Scott Bergmann  
**Subject:** FW: Mpower - Complaint\_v1.DOC

Scott:

Attached is Mpower's complaint against SBC in CA. Civil court actions seem to be the only way to get SBC's attention these days. We really need your

help to get SBC and VZ to comply with the mandates of the Act and the TRO. Also, the 32 tickets that SBC claims to be a representative sample were chosen by SBC with no input from MPower. At the time SBC chose to look at this sample to substantiate whether an issue existed, there is no statistically valid manner to apply the results of 32 tickets to a dispute base of 14,000 tickets without some serious ground rules. That is why SBC and Mpower agreed to the sample of 75 tickets against 684 billed in June and July of 2002.

Thanks for your time.

Scott Sarem  
VP Strategic Relations  
Mpower Communications

-----Original Message-----

**From:** Davis, Richard W. [mailto:RDAVIS@stroock.com]  
**Sent:** Monday, September 22, 2003 11:34 AM  
**To:** ssarem@mpowercom.com  
**Cc:** Heatter, Rick  
**Subject:** Mpower - Complaint\_v1.DOC

Scott:

I have attached a copy of the complaint. I will mail you a complete set (with the summons, etc.). To what address would you like it sent? I will also send a complete set to Rick Heatter at the address I have for him.

By the way, the summons and complaint were served on Pacific Bell's registered agent for service of process on Friday, September 19, 2003. Pacific Bell's responsive pleading is due on October 20, 2003.

<<Mpower - Complaint\_v1.DOC>>



STROOCK & STROOCK & LAVAN LLP  
2029 Century Park East, Suite 1800  
Los Angeles, California 90067-3086

STROOCK & STROOCK & LAVAN LLP  
LAURIE DEYOUNG (State Bar No. 154796)  
RICHARD W. DAVIS (State Bar No. 161858)  
MEG E. SMITH (State Bar No. 217452)  
2029 Century Park East, Suite 1800  
Los Angeles, California 90067-3086  
Telephone: 310-556-5800  
Facsimile: 310-556-5959

Attorneys for Plaintiff  
MPOWER COMMUNICATIONS CORP.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

MPOWER COMMUNICATIONS CORP., a  
Nevada corporation,  
  
Plaintiff,  
  
vs.  
  
PACIFIC BELL TELEPHONE COMPANY  
d/b/a SBC California, a California corporation,  
and DOES 1 through 50, inclusive,  
  
Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

Plaintiff MPOWER COMMUNICATIONS CORP. ("Plaintiff" or "Mpower") alleges as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff Mpower is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business at Pittsford, New York. At all relevant times, Mpower was qualified to do business in the State of California.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendant PACIFIC BELL TELEPHONE COMPANY d/b/a SBC California ("PacBell") is a corporation organized and existing under the laws of the State of California, with its principal place of business at San Francisco, California.

1           3.       Mpower is a competitive local exchange carrier ("CLEC") providing voice and data  
2 services in California to small and medium size businesses in competition with PacBell. PacBell is  
3 an incumbent local exchange carrier ("ILEC") that provides service to customers in various  
4 exchanges located throughout the state. Mpower and PacBell compete for the same business  
5 customers.

6           4.       This tort action for damages arises out of PacBell's unlawful, interfering conduct  
7 practiced for the purpose of damaging Mpower, a new and growing entrant in the marketplace, so  
8 that PacBell can maintain its monopoly position for telecommunications services in California.  
9 Mpower has been providing telecommunications services to residential and business customers in  
10 California since 1997 after Congress passed the Telecommunication Act of 1996 (the "Telecom  
11 Act"). The Telecom Act opened up local telephone markets to competition after years of state-  
12 sanctioned monopolization.

13           5.       The Telecom Act mandates that companies such as PacBell, which control the  
14 nation's ubiquitous local telephone networks, provide competitors with access to those network  
15 facilities. Mpower cannot provide competitive telecommunications services without access to  
16 PacBell's network.

17           6.       Mpower has become an extremely attractive alternative to customers by providing a  
18 competitively priced bundle of services with high-quality support. Mpower has invested  
19 significant amounts of capital to compete with PacBell.

20           7.       PacBell correctly identified Mpower as a very competitive threat to PacBell's  
21 current stranglehold on the marketplace. In response to Mpower's continued growth in the  
22 marketplace, PacBell has engaged in a host of unlawful, anticompetitive and fraudulent actions  
23 with the intent to injure Mpower as described below.

24           8.       Among the services Mpower provides to its customers is high-speed data service  
25 over what is known as DS-1 (also known as a T-1) capable loops (hereinafter referred to as "DS-  
26 1"), a service which directly competes with a like service from PacBell.

27           9.       Mpower leases DS-1 loops from PacBell as mandated by the Telecom Act. The  
28 Public Utilities Commission of the State of California ("CPUC") has set the wholesale prices at

1 which PacBell must lease its loops and other network elements to competitive carriers such as  
2 Mpower.

3 10. Mpower has leased DS-1 loops from PacBell since January 2002. Included in the  
4 cost of leasing a DS-1 loop from PacBell is maintenance and repair of the loop.

5 11. The CPUC has created a standard of care by which PacBell must operate when  
6 providing DS-1 loops to competitive carriers such as Mpower. The standard of care is referred to  
7 as "parity," meaning that PacBell must provide Mpower the same level of service performance as it  
8 provides to its own retail customers.

9 12. In connection with providing DS-1 loops to Mpower, the CPUC has determined that  
10 PacBell must provide maintenance and repair at parity. SBC is required to report its retail  
11 performance in comparison to the service it provides Mpower on a monthly basis. PacBell  
12 publishes the performance measures on its website on the twenty-first day of each month for the  
13 prior month. This particular performance measure is measure 19.

14 Measurement 19: Customer Trouble Report  
15 Rate.

16 This measurement calculates the number of  
17 network customer trouble reports in a  
18 calendar month, as a percentage of the total  
19 number of access lines/circuits/UNEs in  
20 service at the end of the prior reporting  
21 period. The measurement allows the  
22 Commission and the parties to compare the  
23 quality of facilities and services provided  
24 to CLECs and their customers with those  
25 provided to Pacific/Verizon customers. The  
26 Commission can thereby ensure that  
27 Pacific/Verizon is providing CLECs with  
28 services and facilities in a non-  
discriminatory fashion.

23 See performance measurement for the last 20 months, attached hereto as Exhibit "A." Mpower and  
24 PacBell get together on a weekly basis to go over the results. PacBell is aware of this substandard  
25 performance and has done nothing to improve results.

26 13. The Performance Report shows that PacBell has provided sub-standard maintenance  
27 and repair service to the DS-1 lines Mpower leases from January 2002 through June 2003.  
28

1           14.     PacBell competes against Mpower by touting PacBell's reliability and quality of  
2 service. In a recent advertising campaign, PacBell stated: "Competitors are nothing but a bunch of  
3 marketing companies." PacBell continues to ask what will happen to a customer's service if the  
4 customer goes to a competitor and has a service issue when the competitor has no expertise to fix  
5 the issues. The commercial goes on to suggest that because PacBell owns the network and built it,  
6 PacBell is in a better position than competitors to fix the network if anything happens to go wrong.  
7 Ironically, PacBell is the company responsible for dispatching and fixing trouble on the unbundled  
8 network elements that Mpower leases from PacBell. In other words, PacBell competes against  
9 Mpower by asserting that Mpower and other CLECs do not know how to maintain the network and  
10 customers will be at risk if they change from PacBell to a competitor. This is misleading because  
11 PacBell is legally required to maintain the network elements that substantiate this issue. PacBell  
12 competes on service issues and then provides sub-standard service to Mpower. This commercial  
13 has run in California from December 2002 through May 2003. PacBell provides service to its retail  
14 customers over the same lines it leases to Mpower. However, PacBell provides sub-standard  
15 service to Mpower on the same lines it touts as reliable to its own customers.

16           15.     PacBell's sub-standard service regarding loops has allowed it to win back customers  
17 causing Mpower to lose a significant amount of business.

18           16.     PacBell is motivated to interfere with Mpower's customer relationships as PacBell  
19 believes the current competitive structure gives new competitors an unfair advantage in competing  
20 for the same customers. PacBell has stated publicly that it believes that the wholesale prices set by  
21 state regulators allow competitors to purchase network access at deep discounts resulting in  
22 competitors taking PacBell's profitable business customers. PacBell, as a monopoly provider of  
23 the loops, has chosen to employ misleading tactics and unfair business practices to win back  
24 customers which PacBell then signs to long-term agreements.

25 ///

26 ///

27 ///

28 ///



**FIRST CAUSE OF ACTION**

**For Interference With Contractual Relations**

**(Against All Defendants)**

16. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 15, *supra*, as though set forth in full.

17. Mpower has valid contractual relationships with its customers. Mpower's customers receive services via DS-1 loops either pursuant to a term contract of one, two or three years, or on a month-to-month basis.

18. PacBell is aware of each and every contractual relationship existing between Mpower and its customers as Mpower must order the DS-1 loops from PacBell and PacBell must provide the loops for Mpower to use to provide service to its customers.

19. PacBell has acted intentionally to interfere with the contractual relationships between Mpower and its customers by providing a lower level of maintenance and service to Mpower's customers compared with PacBell's own customers.

20. In so acting, PacBell intends to prevent Mpower from providing Mpower's customers with service as required by these contractual relationships.

21. As a result of PacBell's intentional interference, Mpower's customers have:

- complained about the quality of the service provided over the DS-1 loops maintained by PacBell;
- terminated their contracts and/or relationships with Mpower; and
- replaced the service previously provided by Mpower with service from PacBell.

22. As a result of PacBell's intentional interference and the subsequent dissatisfaction of Mpower's customers, the contractual relationships have been disrupted and/or terminated, resulting in Mpower's (1) loss of revenue exceeding \$709,593; and (2) loss of reputation and good will. The amount of Mpower's damages has not yet been ascertained, but will be the subject of proof at trial.

23. In engaging in the intentional acts set forth above, PacBell acted with malice, oppression, and/or fraud. Accordingly, Mpower is entitled to an award of exemplary damages.

**SECOND CAUSE OF ACTION**

**For Intentional Interference With Prospective Economic Advantage**

**(Against All Defendants)**

24. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 15, and 17 through 23, *supra*, as though set forth in full.

25. To the extent that the relationships between Mpower and its customers did not rise to the level of a contractual relationship, those relationships constituted an economic relationship containing a probable future economic benefit to Mpower.

26. Again, by virtue of the fact that Mpower had to order the DS-1 loops from PacBell and PacBell had to provide the loops for Mpower to use to provide service to its customers, PacBell knew of the existence of these relationships.

27. Nonetheless, PacBell intentionally engaged in wrongful conduct designed to interfere with or disrupt these relationships. Specifically, PacBell intended to and did provide a lower level of maintenance and service to Mpower's customers compared with PacBell's own customers, thus ensuring that Mpower's customers would be dissatisfied with Mpower's service.

28. As a result of PacBell's intentional interference, the economic relationships were actually interfered with or disrupted. Mpower's customers have:

- complained about the quality of the service provided over the DS-1 loops maintained by PacBell;
- terminated their economic relationships with Mpower; and
- replaced the service previously provided by Mpower with service from PacBell.

29. As a result of PacBell's intentional interference and the subsequent dissatisfaction of Mpower's customers, the economic relationships have been disrupted and/or terminated, resulting in Mpower's (1) loss of revenue exceeding \$709,593; and (2) loss of reputation and good will. The amount of Mpower's damages has not yet been ascertained, but will be the subject of proof at trial.

30. In engaging in the intentional acts set forth above, PacBell acted with malice, oppression, and/or fraud. Accordingly, Mpower is entitled to an award of exemplary damages.

**THIRD CAUSE OF ACTION**

**For Negligent Interference With Prospective Economic Advantage**

**(Against All Defendants)**

31. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 15, 17 through 23, and 25 through 30, *supra*, as though set forth in full.

32. To the extent that the relationships between Mpower and its customers did not rise to the level of a contractual relationship, those relationships constituted an economic relationship containing a probable future economic benefit to Mpower.

33. Because Mpower had to order the DS-1 loops from PacBell and PacBell had to provide the loops for Mpower to use to provide service to its customers, PacBell knew of the existence of these relationships.

34. Nonetheless, PacBell engaged in wrongful conduct that interfered with or disrupted these relationships. Specifically, as set forth above, PacBell provided Mpower's customers with products and services which were inferior to those which PacBell provided to its own customers.

35. It was reasonably foreseeable that PacBell's wrongful conduct would interfere with or disrupt Mpower's economic relationships with its customers if PacBell failed to exercise due care in providing and maintaining the DS-1 loops. PacBell negligently provided a lower level of maintenance and service to Mpower's customers compared with PacBell's own customers, thus ensuring that Mpower's customers would be dissatisfied with Mpower's service.

36. As a result of PacBell's conduct, the economic relationships were actually interfered with or disrupted. Mpower's customers have:

- complained about the quality of the service provided over the DS-1 loops maintained by PacBell;
- terminated their economic relationships with Mpower; and
- replaced the service previously provided by Mpower with service from PacBell.

37. As a result of the conduct described above, Mpower lost, in whole or in part, the economic benefit from the economic relationships. The economic relationships have been disrupted and/or terminated, resulting in Mpower's (1) loss of revenue exceeding \$709,593; and (2)

1 loss of reputation and good will. The amount of Mpower's damages has not yet been ascertained,  
2 but will be the subject of proof at trial.

3 **FOURTH CAUSE OF ACTION**

4 **For Violation of California Business & Professions Code Section 17200, et seq.**

5 **(Against All Defendants)**

6 38. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 15, 17  
7 through 23, 25 through 30, and 32 through 37, *supra*, as though set forth in full.

8 39. California Business & Professions Code Section 17200 defines "unfair competition"  
9 to mean any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
10 misleading advertising.

11 40. As alleged above, PacBell has intentionally engaged in wrongful conduct intended  
12 to cause Mpower to lose customers. PacBell's conduct constitutes unfair competition because the  
13 business acts and practices are unlawful, unfair, and fraudulent. Moreover, PacBell's advertising  
14 campaign, which suggests that Mpower is responsible for the sub-standard service and maintenance  
15 of the DS-1 loops, constitutes unfair, deceptive, untrue or misleading advertising.

16 41. As a result of PacBell's unlawful, unfair, and fraudulent business acts and practices,  
17 and unfair, deceptive, untrue or misleading advertising, Mpower has suffered and continues to  
18 suffer irreparable harm in the form of lost customers, lost revenue, and loss of reputation and  
19 goodwill. Mpower does not have an adequate remedy at law such that injunctive relief is  
20 necessary. Mpower will continue to be irreparably damaged if PacBell is allowed to persist in such  
21 conduct. Therefore, PacBell must be enjoined from continuing such acts and practices.

22 42. In addition, PacBell has wrongfully benefited from its unfair business acts and  
23 practices, and unfair, deceptive, untrue or misleading advertising such that restitution of PacBell's  
24 ill-gotten gains should be granted. PacBell should be required to disgorge its illegally and  
25 improperly obtained profits and provide restitution for the losses described herein.

26 ///

27 ///

28 ///



**FIFTH CAUSE OF ACTION**

**For Violation of California Public Utilities Code Section 709, et seq.**

**(Against All Defendants)**

43. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 15, 17 through 23, 25 through 30, 32 through 37, and 39 through 42, *supra*, as though set forth in full.

44. Pursuant to California Public Utilities Code Section 709, the Legislature declared that the policies for telecommunications in California include the promotion of lower prices, broader consumer choice, and the avoidance of anticompetitive conduct. The policies also include the removal of barriers to open and competitive markets, and the promotion of fair product and price competition in a way that encourages efficiency, lower prices, and consumer choice.

45. Pursuant to California Public Utilities Code Section 709.5, the Legislature declared an intent that all telecommunications markets subject to CPUC jurisdiction be opened to competition not later than January 1, 1997. The CPUC was charged with the responsibility of ensuring that competition in the telecommunications markets is fair.

46. PacBell's conduct as set forth above constitutes a violation of California Public Utilities Code Section 709, et seq. In the CPUC's Opinion on the Performance Incentives Plan, the CPUC expressed its intent that performance penalties not be the exclusive remedy available for anticompetitive conduct by an ILEC such as PacBell. Mpower has been and will continue to be irreparably damaged if PacBell is permitted to continue violating California Public Utilities Code Section 709, et seq. Because Mpower has no adequate remedy at law, PacBell must be enjoined from engaging in the aforementioned acts and practices.

**SIXTH CAUSE OF ACTION**

**For Violation of California Public Utilities Code Section 2106**

**(Against All Defendants)**

47. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 15, 17 through 23, 25 through 30, 32 through 37, 39 through 42, and 44 through 46, *supra*, as though set forth in full.

1           48. Any public utility which does, causes to be done, or permits any act, matter, or thing  
2 prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done,  
3 either by the Constitution, any law of this State, or any order or decision of the commission, shall  
4 be liable to the persons or corporations affected thereby for all losses, damages, or injury caused  
5 thereby or resulting therefrom.

6           49. As a result of PacBell's wrongful conduct and violation of California Business and  
7 Professions Code Section 17200 and California Public Utilities Code Section 709, et. seq., Mpower  
8 has been damaged in the form of lost revenue exceeding \$709,593, and loss of reputation and good  
9 will in an amount to be determined according to proof at trial.

10           WHEREFORE, Mpower prays for judgment as follows:

11           1. On the First Cause of Action:

- 12               a. For compensatory damages in an amount according to proof;  
13               b. For exemplary damages as permitted by law;  
14               c. For costs and fees incurred; and  
15               d. For such other and further relief as may be just;

16           2. On the Second Cause of Action:

- 17               a. For compensatory damages in an amount according to proof;  
18               b. For exemplary damages as permitted by law;  
19               c. For costs and fees incurred; and  
20               d. For such other and further relief as may be just;

21           3. On the Third Cause of Action:

- 22               a. For compensatory damages in an amount according to proof;  
23               b. For costs and fees incurred; and  
24               c. For such other and further relief as may be just;

25           4. On the Fourth Cause of Action:

- 26               a. For injunctive relief as allowed by law;  
27               b. For restitution as allowed by law;  
28               c. For costs and fees incurred; and

- d. For such other and further relief as may be just;
5. On the Fifth Cause of Action:
  - a. For injunctive relief as allowed by law;
  - b. For restitution as allowed by law;
  - c. For costs and fees incurred; and
  - d. For such other and further relief as may be just;
6. On the Sixth Cause of Action:
  - a. For compensatory damages in an amount according to proof;
  - b. For injunctive relief as allowed by law;
  - c. For restitution as allowed by law;
  - d. For costs and fees incurred; and
  - e. For such other and further relief as may be just.

Dated: September 18, 2003

STROOCK & STROOCK & LAVAN LLP  
Laurie DeYoung  
Richard W. Davis  
Meg E. Smith

By: \_\_\_\_\_

Richard W. Davis  
Attorneys for Plaintiff  
MPOWER COMMUNICATIONS CORP.